**Standard Brands Paint Company *and* United Food & Commercial Workers Union, Locals 101, 135, 324, 770, 870, 1036, 1167, 1288, 1428, and 1442**

**Major Paint Company *and* United Food & Commercial Workers Union, Locals 101, 135, 770, 870, 1036, 1167, 1288, 1428, and 1442.** Cases 31–CA–21895, 31–CA–21896, 31–CA–21914, 31–CA–21992, and 31–CA–21993

January 17, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Upon charges and an amended charge filed by the various Charging Party Unions on March 20 and 27, April 26, and May 17, 1996, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint (complaint) on June 26, 1996, and an amendment to the amended consolidated complaint on August 8, 1996, against Standard Brands Paint Company (Respondent Standard) and Major Paint Company (Respondent Major), collectively the Respondent, alleging that the Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although the Respondent filed answers, the Respondent withdrew these answers by letter dated November 12, 1996.

On November 29, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On December 3, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 9, 1996, certain of the Charging Party Unions filed a response in support of the motion. The Respondent, however, filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that although the Respondent initially filed answers, it subsequently withdrew the answers. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations are considered to be admitted.[1]

Although the Respondent appears to be in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times Respondent Standard has been a California corporation with an office and principal place of business in Torrance, California, from which it is engaged in the operation of a chain of retail paint stores throughout the State of California, as well as production, warehouse, and office facilities in Torrance. Respondent Standard, in the course and conduct of its business operations, annually derives gross revenues in excess of $500,000, purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California, and sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of California.

At all material times Respondent Major, a corporation with an office and place of business in Torrance, California, has been engaged in the manufacture and distribution of paint products sold in Standard Brands retail stores. Respondent Major, in conducting its business operations, annually sells and ships from its Torrance, California facility goods or services valued in excess of $50,000 directly to customers or business enterprises located outside the State of California and purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

At all material times Respondent Standard and Respondent Major have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Respondent Standard and Respondent Major constitute

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

a single-integrated business enterprise and a single employer within the meaning of the Act.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> *Included*: All employees of the Respondent employed in the retail paint stores within the State of California and in the factory warehouse and office complex in Torrance, California.
>
> *Excluded*: Laboratory technicians, professional employees, confidential employees, guards and supervisors, as defined in the Act.

About November 27, 1991, the Respondent and the Unions entered into a collective-bargaining agreement effective from about November 27, 1991, to about December 3, 1995, covering rates of pay, wages, hours of employment, and other terms and conditions of employment of the Respondent's employees in the unit (the 1991–1995 agreement). About December 1995, the Respondent and the Unions agreed to extend the 1991–1995 agreement through March 5, 1996. Commencing in December 1995, and at all times thereafter, the Respondent has failed and refused to bargain collectively with the Unions as the exclusive collective-bargaining representative of the unit in the following manner.

Commencing in December 1995, the Unions have requested that the Respondent bargain collectively with the Unions as the exclusive collective-bargaining representative of the unit.

Beginning in December 1995, the Respondent has failed to adhere to contractually mandated layoffs according to seniority in general and an agreed-on list of specific employees in particular. On January 12, 1996, the Respondent announced and implemented a change in the health care provider. Beginning in December 1995, the Respondent has failed and/or refused to respond to grievances filed on behalf of employees in the unit or to continue to process grievances filed prior to December 1995. Beginning in January 1996, the Respondent has refused to grant employees vacation leave with pay as required by the agreement. In addition, the Respondent has failed to provide in a timely manner the following information which is relevant and necessary to the administration of the agreement:

> The financial statements for the most recent fiscal year and fiscal quarter. Do the financial statements show any liability for the cost of post-retirement health and welfare benefits?
>
> A list, by name of payee, date, Local, and the amount of any paychecks issued prior to December 27, 1995 which have not been honored by Standard Brands Paint Co.'s bank.
>
> A list, by name of employee, Local, and amount of dues that were deducted prior to December 27, 1995 from paychecks of employees of Standard Brands Paint Co. but which have not yet been paid to the employees' Local Union.
>
> A list, by name of employee, Local, and amount of any sick leave earned prior to December 27, 1995 which is now payable but which has not yet been paid by Standard Brands Paint Co.
>
> A list, by name of employee, Local, and amount of any vacation pay earned prior to December 27, 1995 which is now payable but which has not yet been paid by Standard Brands Paint Co.
>
> It is requested that the above information also be provided with respect to Major Paint Company.
>
> This conduct occurred without notice to or bargaining with the Unions.

About February 29, 1996, the Respondent laid off its employee Rodney Elpheage and since that date has failed to reinstate him to his former position of employment. The Respondent engaged in this conduct because Rodney Elpheage joined or assisted the Unions or engaged in other protected concerted activities, and to discourage employees from engaging in these activities.

## CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By failing to adhere to contractually mandated layoffs, announcing and implementing a change in the health care provider, failing and/or refusing to respond to grievances or to continue to process grievances, refusing to grant contractually required vacation leave with pay, and failing to provide the requested information, the Respondent has also been failing and refusing to bargain collectively in good faith with the exclusive collective-bargaining representative of its employees, and has thereby also engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

3. By laying off an employee and failing to reinstate him, the Respondent has also been discriminating with regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed, beginning in December 1995, to adhere to contractually mandated layoffs according to seniority and an agreed-upon list of specific employees, and, since January 1996, has refused to grant employees contractually mandated vacation leave with pay, we shall order the Respondent to honor its agreements with the Unions, rescind the unlawful layoffs, and to make the unit employees whole for any loss of earnings and benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally implementing a change in the health care provider for its unit employees on January 12, 1996, we shall order the Respondent, on request, to rescind the change and restore the former health care provider and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Furthermore, having found that the Respondent has failed to provide the Unions information that is relevant and necessary to their role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Unions the information requested.

In addition, having found that the Respondent has failed and refused, beginning in 1995, to respond to or continue to process grievances filed on behalf of unit employees, we shall order the Respondent to accept and process the grievances.

Finally, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off Rodney Elpheage about February 29, 1996, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and all references to the unlawful layoff, and to notify the discriminatee in writing that this has been done.[2]

## ORDER

The National Labor Relations Board orders that the Respondent, Standard Brands Paint Company and Major Paint Company, Torrance, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively with United Food & Commercial Workers Union, Locals 101, 135, 770, 870, 1036, 1167, 1288, 1428, and 1442 in the following unit by failing to adhere to contractually mandated layoffs according to seniority in general and an agreed-on list of specific employees in particular, by announcing and implementing a change in the health care provider, by failing and/or refusing to respond to grievances filed on behalf of employees in the unit or to continue to process grievances, by refusing to grant employees contractually required vacation leave with pay, or by failing to provide requested information which is relevant and necessary to the administration of the collective-bargaining agreement:

> *Included*: All employees of the Respondent employed in the retail paint stores within the State of California and in the factory warehouse and office complex in Torrance, California.
>
> *Excluded*: Laboratory technicians, professional employees, confidential employees, guards and supervisors, as defined in the Act.

(b) Laying off its employees or failing to reinstate them because they join or assist the Unions or engage in other protected concerted activities, or to discourage employees from engaging in these activities.

[2] In their response to the Notice to Show Cause, several of the Charging Party Unions request that the Board impose a remedy under *Tiidee Products, Inc.*, 196 NLRB 158 (1970), enfd. 426 F.2d 1243 (D.C. Cir. 1970), and require the Respondent to reimburse the Unions for the excess costs incurred by them in preparing to litigate this case prior to the scheduled hearing. The Union contends that the Respondent's "last minute" withdrawal of its answer the day before the scheduled hearing indicates that the Respondent never had a legitimate defense. We deny the request as the Respondent's withdrawal letter indicates that the answers were being withdrawn because of the Respondent's financial condition, and there is no basis in the instant record for concluding that the Respondent's position was frivolous within the meaning of *Frontier Hotel & Casino*, 318 NLRB 857 (1995).

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the agreements with the Unions, rescind the layoffs that were not in accord with the contractual or agreed-on procedures, and make the unit employees whole for any loss of earnings and benefits attributable to its failure to follow contractual procedures in layoffs and to grant vacation leave with pay, in the manner set forth in the remedy section of this decision.

(b) On request, rescind the change in the health care provider and restore the employees' health care provider in effect prior to January 12, 1996, and make the unit employees whole by reimbursing them for any expenses ensuing from this conduct in the manner set forth in the remedy section of this decision.

(c) Provide the Unions the requested information.

(d) Respond to and process the grievances filed on behalf of the unit employees.

(e) Within 14 days from the date of this Order, offer Rodney Elpheage full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(f) Make Rodney Elpheage whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(g) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful layoff and, within 3 days thereafter, notify the discriminatee in writing that this has been done.

(h) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Torrance, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 20, 1996.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively with United Food & Commercial Workers Union, Locals 101, 135, 770, 870, 1036, 1167, 1288, 1428, and 1442 in the following unit by failing to adhere to contractually mandated layoffs according to seniority in general and an agreed-on list of specific employees in particular, by announcing and implementing a change in the health care provider, by failing and/or refusing to respond to grievances filed on behalf of employees in the unit or to continue to process grievances, by refusing to grant employees contractually required vacation leave with pay, or by failing to provide requested information which is relevant and necessary to the administration of the collective-bargaining agreement:

> *Included*: All employees employed in our retail paint stores within the State of California and in our factory warehouse and office complex in Torrance, California.
>
> *Excluded*: Laboratory technicians, professional employees, confidential employees, guards and supervisors, as defined in the Act.

WE WILL NOT lay off our employees or fail to reinstate them because they join or assist the Unions or engage in other protected concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of our agreements with the Unions, rescind the layoffs that were not in accord with the contractual or agreed-on procedures, and WE

WILL make our unit employees whole for any loss of earnings and benefits attributable to our failure to follow contractual procedures in layoffs and to grant vacation leave with pay.

WE WILL, on request, rescind the change in the health care provider and restore the employees' health care provider in effect prior to January 12, 1996, and make the unit employees whole by reimbursing them for any expenses ensuing from this conduct.

WE WILL provide the Unions the information they requested.

WE WILL respond to and process the grievances filed on behalf of our unit employees.

WE WILL, within 14 days from the date of the Board's Order, offer Rodney Elpheage full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful layoff of Rodney Elpheage and, within 3 days thereafter, notify him in writing that this has been done.

STANDARD BRANDS PAINT COMPANY
AND MAJOR PAINT COMPANY